S 44 (Rev. 12/07, NJ 5/08)

# CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

L (a) PLAINTIFES  EVON FUQUA  (b) County of Residence of First Listed Plaintiff  (c) Atterney's (Firm Name, Address, Telephone Namber and Email Address)  Craig Ther Kimmel, Esquire  Kimmel & Silverman, P. C.  30 E. Butler Pike  Ambler, PA 19002  215.5 \$40.8888  11 B. ASSIS OF JURISDICTION (Plans as "X" in One Box Cody)  11 U.S. Government  12 Silvermann  13 Faters Question  14 Diversity  15 Defendant  16 Diversity  16 Diversity  16 Diversity  17 Diversity  18 Silvermann  19 Diversity  10 Diversity  10 Diversity  10 Diversity  10 Diversity  11 Diversity  11 Diversity  11 Diversity  12 Diversity  13 Faters Question  14 Diversity  15 Diversity  16 Diversity  16 Diversity  16 Diversity  17 Diversity  18 Diversity  19 Diversity  19 Diversity  10 Diversity  10 Diversity  10 Diversity  10 Diversity  10 Diversity  11 Diversity  11 Diversity  12 Diversity  13 Diversity  14 Diversity  15 Diversity  16 Diversity  16 Diversity  17 Diversity  18 Diversity  18 Diversity  19 Diversity  19 Diversity  19 Diversity  10 Diversity  10 Diversity  10 Diversity  10 Diversity  10 Diversity  10 Diversity  11 Diversity  11 Diversity  12 Diversity  12 Diversity  13 Diversity  14 Diversity  15 Diversity  16 Diversity  16 Diversity  17 Diversity Case Orbity  18 Diversity  19 Diversity  19 Diversity  10 Diversity  11 Diversity  11 Diversity  12 Diversity  13 Diversity  14 Diversity  15 Diversity  16 Diversity  16 Diversity  17 Diversity  18 Diversity  19 Diversity  19 Diversity  19 Diversity  19 Diversity  10 Diversity							
(b) County of Residence of First Linted Paintiff  (c) Afterney's (Firm Manta, Address, Telephone Namber and Email Address)  (Craig Thor Kimmel, Esquire Kimmel	I. (a) PLAINTIFFS		DEFENDANTS				
(c) Attorney's (Firm Name, Address, Telephone Namber and Email Address)  Craig Thor Kimmel, Esquiree Kimmel & Silverman, P. C. 30 E. Buller Pike Ambler, PA 19002 (215), 540-888.  III. BASIS OF JURISDICTION (flare as 'X' in One Box Only)  III. CHIZZENSHIP OF PRINCIPAL PARTIES(flace an 'X' in One Box Only)  III. CHIZZENSHIP OF PRINCIPAL PARTIES(flace an 'X' in One Box Only)  III. CHIZZENSHIP OF PRINCIPAL PARTIES(flace an 'X' in One Box Only)  III. CHIZZENSHIP OF PRINCIPAL PARTIES(flace an 'X' in One Box Only)  III. CHIZZENSHIP OF PRINCIPAL PARTIES(flace an 'X' in One Box Only)  III. CHIZZENSHIP OF PRINCIPAL PARTIES(flace an 'X' in One Box Only)  III. CHIZZENSHIP OF PRINCIPAL PARTIES(flace an 'X' in One Box Only)  III. CHIZZENSHIP OF PRINCIPAL PARTIES(flace an 'X' in One Box Only)  III. CHIZZENSHIP OF PRINCIPAL PARTIES(flace an 'X' in One Box Only)  III. CHIZZENSHIP OF PRINCIPAL PARTIES(flace an 'X' in One Box Only)  III. CHIZZENSHIP OF PRINCIPAL PARTIES(flace an 'X' in One Box Only)  III. CHIZZENSHIP OF PRINCIPAL PARTIES(flace an 'X' in One Box Only)  III. CHIZZENSHIP OF PRINCIPAL PARTIES(flace an 'X' in One Box Only)  III. CHIZZENSHIP OF PRINCIPAL PARTIES(flace an 'X' in One Box Only)  III. CHIZZENSHIP OF PRINCIPAL PARTIES(flace an 'X' in One Box Only)  III. CHIZZENSHIP OF PRINCIPAL PARTIES(flace an 'X' in One Box Only)  III. CHIZZENSHIP OF PRINCIPAL PARTIES(flace an 'X' in One Box Only)  III. CHIZZENSHIP OF PRINCIPAL PARTIES(flace an 'X' in One Box Only)  III. CHIZZENSHIP OF PRINCIPAL PARTIES(flace an 'X' in One Box Only)  III. CHIZZENSHIP OF PRINCIPAL PARTIES(flace an 'X' in One Box Only)  III. CHIZZENSHIP OF PRINCIPAL PARTIES(flace an 'X' in One Box Only)  III. CHIZZENSHIP OF PRINCIPAL PARTIES(flace an 'X' in One Box Only)  III. CHIZZENSHIP OF PRINCIPAL PARTIES(flace an 'X' in One Box Only)  III. CHIZZENSHIP OF PRINCIPAL PARTIES(flace an 'X' in One Box Only)  III. CHIZZENSHIP OF PRINCIPAL PARTIES(flace an 'X' in One Box Only)  III. CHIZZENSHIP OF PRINCIPAL PARTIES(flace an 'X' in One Box Only)  III. CHIZZENSH	EVON FUQUA		NCO FINANCIA	NCO FINANCIAL SYSTEMS, INC.			
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Defendant   Citations Citizenability of Parties in Item III)   Citizen or Subject of a				1	incipal Place 🗂 4 🗂 4		
Citizen or Subject of a   3   3   Foreign Nation     6   6   6	☐ 2 U.S. Government	☐ 4 Diversity	Citizen of Another State				
IV. NATURE OF SUIT (*flace an "X" in One Dax Only)    CONTRACT =	Defendant	(Indicate Citizenship of Parties in Item III)		of Business In A	Another State		
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Under Equal Access to Justice Employment	240 Torts to Land	Accommodations			Act		
V. ORIGIN Office an "X" in One Box Only)  Y. ORIGIN Original Proceeding Proceeding State Court Appelate Court Appelate Court Appelate Court Appelate Court Office the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  VI. CAUSE OF ACTION  Complaint: Under Fr. C.P. 23  VII. REQUESTED IN CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23  Complaint: Under F.R.C.P. 24  Complaint: Under F.R.C.P. 25  Complai							
V. ORIGIN Office an "X" in One Box Only) Proceeding VI. CAUSE OF ACTION Cite the U.S. Civil Status under which you are filing (Do not cite jurisdictional statutes unless diversity):  VII. REQUESTED IN COMPLAINT: UNDER F.R.C.P. 23  O 555 Prison Condition Alien Detaince Actions  Transferred from another district (specify) State Court Appeal to District Appeal to District State Court Appeal to District State Statutes unless diversity:  To U.S. C. State Statutes unless diversity:  State Statutes  Appeal to District State Court Appeal to District State Court Appeal to District State Statutes  Appeal to District State Statutes  Appeal to District State Court Appeal to District State Court Appeal to District State State Statutes  Appeal to District State State State State State Court Appeal to District State State State State State State State Court Appeal to District State	() 290 An Other Real Property						
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VI. CAUSE OF ACTION    Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):   U.S. C. SECTION 1692	☑ 1 Original ☐ 2 R	emoved from 3 Remanded from	page and the	r district	rict () 7 Judge from Magistrate		
VI. CAUSE OF ACTION  Brief description of cause: Fair Debt Collection Practices Act  VII. REQUESTED IN COMPLAINT:  UNDER F.R.C.P. 23  UNDER F.R.C.P. 23  CHECK YES only if demanded in complaint: JURY DEMAND:  JURY DEMAND:  OND  VIII. RELATED CASE(S)  (See instructions):  JUDGE  DOCKET NUMBER  Explanation:  5-27-11  SIGMA TWA Tymnel	Trowning Di		- 1SOCUII	VI -	Judgment		
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# UNITED STATES DISTRICT COURT

Address of Philosoffi.    Skm   Court   Management Road   Management Road   Management Road   Management Road   Management Rolations	FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.							
Pisce of Accident, Incident or Transaction:  (**Use Reverse Side For Additional Space**)  Deer this civil action involve a nongovernmental corporate party with any parent corporation and any publicly hald corporation owning 10% or poor of its stock?  (**Atzach two capies of the Directoure Statement Form in accordance with Fed R.C.V.P. 7.1(a))  Does this case involve multidistrict litigation possibilities?  **RELATED CASE, It Alw:**    holdge								
Does this civil action involve a nongovernmental corporate party with any sparent corporation and any publicly held corporation owning 10% or prove of its stock?  (Attach two copies of the Disclosure Statement Form in accordance with Fed R.Civ.P. 7.1(n))  Does this case involve multidistrict litigation possibilities?  Peal No.								
Does this civil action involve a nongovernmental comporate party with any parent corporation and any publicly held corporation availage 10% or prove of its stock?  (Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Gv.P. 7.1(a))  Does this case involve mobidistrict litigation possibilities?  RELATED CASE, IF AMY:  Judge  Date Terminated:  [Vest Cases Number:  Judge  Date Terminated:  [Vest Cases Number:  Judge  Date Terminated action in this count?  Yes Cases Number:  1. Is this case related to preperty included in an earlier numbered suit pending or within one year previously terminated action in this count?  Yes Cases Number:  2. Does this case involve the stated to preperty included in an earlier numbered suit pending or within one year previously terminated action in this count?  Yes Cases Number:  3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this count?  Yes Cases Number:  4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the name individual?  Yes Cases Number:  A lititude of the successive habeas corpus, social security appeal, or pro se civil rights case filed by the name individual?  Yes Cases Contract and Other Contracts  1. Cases Individual?  Yes Cases Number:  1. Cases Active Personal Injury  3. Cases Active Personal Injury  3. Cases Individual?  A statut, Defamation  4. Cases Antificus Cases:  1. Cases Active Personal Injury  3. Cases Individual?  Yes Cases Injury  3. Cases Individual?  Yes Cases Injury  3. Cases Injury  3. Cases Injury  4. Cases Injury  5. Cases Injury  7. Civil Rights  8. Cases Injury  9. Cases Injury  10. Cases Injury								
CANACH two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))   Yes   No	(Use Reverse Side For Addi	itional Space)						
Does this case levelve molidistrict lieigation possibilities?  **RELATED CASE, IF ANN:**  Case Number:	Does this civil action involve a nongovernmental corporate party with any parent corporation and	• •						
RELATED CASE, IF AMY:   Case Number:	(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))	Yes No II						
Civil cases are deemed related when yes is answered to any of the following questions:  1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this count?  2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this count?  Yes   No    3. Does this case involve the validity or infringement of a patent already in sait or any earlier numbered case pending or within one year previously terminated action in this count?  Yes   No	Does this case involve multidistrict litigation possibilities?	Yes No						
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2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?  3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?  4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?  Yes No  CIVIL: (Place V in ONE CAYEGORY ONLY)  A Federal Question Cares:  1. Indemnity Contract, Marine Contract, and All Other Contracts  2. FELA  2. Airplane Personal Injury  3. Assault, Defamation  4. Antitrust  4. Marine Personal Injury  5. Patent  5. Motor Vehicle Personal Injury  7. Products Liability  8. Products Liability  9. Securities Act(s) Cases  10. All other Pederal Question Cases  11. All other Pederal Question Cases  12. Federal Question Cases  13. Antirust  4. Marine Personal Injury  5. ARBITRATION CERTIFICATION  (Check Appropriate Caregory)  ARBITRATION CERTI	Civil cases are deemed related when yes is answered to any of the following questions:							
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4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?  Yes  No  No  No  No  No  No  No  No  No  N	3. Does this case involve the validity or infringement of a patent already in suit or any earlier num	abered case pending or within one year previously						
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1. □ Indemnity Contract, Marine Contract, and All Other Contracts 2. □ FELA 3. □ Jones Act-Personal Injury 3. □ Jones Act-Personal Injury 4. □ Antitrust 5. □ Patent 5. □ Patent 6. □ Labor-Management Relations 6. □ Other Personal Injury 7. □ Civil Rights 7. □ Products Liability 8. □ Habeas Corpus 9. □ Securities Act(s) Cases 10. □ Social Security Review Cases 11. □ All other Federal Question Cases  Please specify)  ARBITRATION CERTIFICATION (Check Appropriate Caregory) 1. □ All other Federal Civil Rule 53.2) Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of S150,000.00 exclusive of interest and costs;  DATE: 5-27-4   NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.  I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.  DATE: 5-37-4   DATE: 5-37-4   August 1-2								
2. □ Airplane Personal Injury 3. □ Jones Act-Personal Injury 4. □ Antitrust 4. □ Marine Personal Injury 5. □ Patent 5. □ Motor Vehicle Personal Injury 6. □ Labor-Management Relations 6. □ Other Personal Injury 7. □ Civil Rights 7. □ Products Liability 8. □ Products Liability 9. □ Securities Act(s) Cases 10. □ Social Security Review Cases 11. □ All other Federal Question Cases 12. □ All other Federal Question Cases 13. □ ARBITRATION CERTIFICATION (Check Appropriate Category) (Please specify)  AUMAGEMENT AND COUNTS of the damages recoverable in this civil action case exceed the sum of \$150,0000 ceclusive of interest and costs; □ Relief other than monetary damages is south.  Authority LD.#  NOTE: A trial de nove will be a trial by jury only if there has been compliance with F.R.C.P. 38.  I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.  DATE: \$37.41								
3.								
4.   Marine Personal Injury  5.   Patent  5.   Motor Vehicle Personal Injury  6.   Labor-Management Relations  6.   Other Personal Injury (Please specify)  7.   Products Liability  8.   Habeas Corpus  9.   Securities Act(s) Cases  10.   Social Security Review Cases  11.   All other Pederal Question Cases  12.   All other Personal Injury (Please specify)  7.   Products Liability — Asbestos  9.   All other Diversity Cases  10.   Social Security Review Cases  11.   All other Personal Injury (Please specify)  8.   Products Liability — Asbestos  9.   All other Diversity Cases  10.   Check Appropriate Caregory)    Pursuant to Local Civil Rule 53.2) Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 caclusive of interest and costs;    Relief other than monetary damages is southed that manages is southed the sum of \$150,000.00 caclusive of interest and costs;    Relief other than monetary damages is southed than monetary damages and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 than the damages recoverable in this civil action case exceed the sum of \$150,000.00 than the damages recoverable in this civil action case exceed the sum of \$150,000.00		• •						
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CIV. 609 (6/08)

# IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

# CASE MANAGEMENT TRACK DESIGNATION FORM

CIVIL ACTION

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100 Fmancral Si	ystems.Inc	NO.						
In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.								
SELECT ONE OF THE FO	LLOWING CASE MANAGE	MENT TRACKS:						
(a) Habeas Corpus - Cases b	rought under 28 U.S.C. § 2241	through § 2255.	(	)				
(b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits.								
(c) Arbitration - Cases requi	red to be designated for arbitrati	on under Local Civil Rule 53.2.	(	)				
(d) Asbestos – Cases involvi exposure to asbestos.	ng claims for personal injury or	property damage from	(	)				
(e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.)								
(f) Standard Management -	Cases that do not fall into any or	ne of the other tracks.	g	8				
<u>J-27-11</u> Date 215-540-8888	Crury Thur Kimmol Automograt-law 1877-788-2864	Evon Figure Attorney for CHAHau	<u> </u>	- Cen				
Telephone	FAX Number	E-Mail Address						

(Civ. 660) 10/02

## 1 IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA 2 3 EVON FUQUA, 4 Plaintiff 5 Case No.: ٧. 6 NCO FINANCIAL SYSTEMS, INC., COMPLAINT AND DEMAND FOR 7 JURY TRIAL Defendant 8 (Unlawful Debt Collection Practices) 9 COMPLAINT 10 EVON FUQUA ("Plaintiff"), by and through her attorneys, KIMMEL & SILVERMAN, 11 P.C., alleges the following against NCO FINANCIAL SYSTEMS, INC. ("Defendant"): 12 13 14 INTRODUCTION 15 1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 16 U.S.C. § 1692 et seq. ("FDCPA"). 17 18 JURISDICTION AND VENUE 19 2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states 20 that such actions may be brought and heard before "any appropriate United States district court 21 without regard to the amount in controversy," and 28 U.S.C. § 1331 grants this court original 22 jurisdiction of all civil actions arising under the laws of the United States. 23 3. Defendant conducts business and has an office in the Commonwealth of 24 Pennsylvania; therefore, personal jurisdiction is established. 25

4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.

### **PARTIES**

- 6. Plaintiff is a natural person residing in Mansfield, Texas, 76063.
- 7. Plaintiff is a person granted a cause of action under the FDCPA. See 15 U.S.C. \$1692k(a) and Wenrich v. Cole, 2000 U.S. Dist. LEXIS 18687 (E.D. Pa. Dec 22, 2000).
- Defendant is a national debt collection company with its corporate headquarters
   located at 507 Prudential Road in Horsham, Pennsylvania, 19044.
- Defendant is a "debt collector" as that term is defined by 15 U.S.C. § 1692a(6),
   and repeatedly contacted Plaintiff in an attempt to collect a debt.
- 10. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

#### PRELIMINARY STATEMENT

11. The Fair Debt Collection Practices Act ("FDCPA") is a comprehensive statute, which prohibits a catalog of activities in connection with the collection of debts by third parties.

See 15 U.S.C. § 1692 et seq. The FDCPA imposes civil liability on any person or entity that violates its provisions, and establishes general standards of debt collector conduct, defines abuse, and provides for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the FDCPA declare certain rights to be provided to or claimed by debtors, forbid deceitful and misleading practices, prohibit harassing and abusive tactics, and proscribe unfair or unconscionable conduct, both generally and in a specific list of disapproved practices.

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12. In particular, the FDCPA broadly enumerates several practices considered contrary to its stated purpose, and forbids debt collectors from taking such action. substantive heart of the FDCPA lies in three broad prohibitions. First, a "debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt." 15 U.S.C. § 1692d. Second, a "debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt." 15 U.S.C. § 1692e. And third, a "debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt." 15 U.S.C. § 1692f. The FDCPA is designed to protect consumers from unscrupulous collectors, whether or not there exists a valid debt, broadly prohibits unfair or unconscionable collection methods, conduct which harasses, oppresses or abuses any debtor, and any false, deceptive or misleading statements in connection with the collection of a debt.

- 13. In enacting the FDCPA, the United States Congress found that "[t]here is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors," which "contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy." 15 U.S.C. § 1692a. Congress additionally found existing laws and procedures for redressing debt collection injuries to be inadequate to protect consumers. 15 U.S.C. § 1692b.
- 14. Congress enacted the FDCPA to regulate the collection of consumer debts by debt collectors. The express purposes of the FDCPA are to "eliminate abusive debt collection practices by debt collectors, to insure that debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses." 15 U.S.C. § 1692e.

## **FACTUAL ALLEGATIONS**

- 15. Beginning in or around May 2010, Defendant placed constant harassing and abusive collection calls to Plaintiff seeking and demanding payment for an alleged consumer debt of another person.
- 16. Upon information and belief, the alleged debt Defendant was seeking to collect arose out of transactions, which were primarily for personal, family, or household purposes.
- 17. Defendant made continuous and repeated telephone calls to Plaintiff's home telephone number.
- 18. Defendant contacted Plaintiff on her home telephone almost every day causing Plaintiff to receive, at times, more than six (6) collection calls a day.
- 19. As a result of Defendant's continuous and repeated telephone calls, Plaintiff received more than ten (10) collection calls a week, and, at times, more than twenty (20) collection calls a month.
  - 20. Defendant identified the debtor to Plaintiff as "Dillard Looney."
- 21. Plaintiff spoke with Defendant on numerous occasions to advise that "Dillard Looney" did not live with her, that Defendant had the wrong telephone number, and not to contact her anymore.
- 22. Defendant, however, ignored Plaintiff's instructions to cease contacting her and continued to place collection calls to Plaintiff's home telephone in its attempts to collect a debt of another person.
- 23. Most recently, Defendant contacted Plaintiff on or around January 7, 2011, in its attempts to collect a debt of another person.
  - 24. The repetitive calls to Plaintiff were disturbing, harassing, and an invasion of

privacy.

- 25. Defendant failed to investigate or verify contact information prior to and after calling Plaintiff.
  - 26. Defendant failed to update its records to avoid further harassment of Plaintiff.

## CONSTRUCTION OF APPLICABLE LAW

- 27. The FDCPA is a strict liability statute. <u>Taylor v. Perrin, Landry, deLaunay & Durand</u>, 103 F.3d 1232 (5th Cir. 1997). "Because the Act imposes strict liability, a consumer need not show intentional conduct by the debt collector to be entitled to damages." <u>Russell v. Equifax A.R.S.</u>, 74 F. 3d 30 (2d Cir. 1996); <u>see also Gearing v. Check Brokerage Corp.</u>, 233 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector's legal status violated FDCPA); <u>Clomon v. Jackson</u>, 988 F. 2d 1314 (2d Cir. 1993).
- 28. The FDCPA is a remedial statute, and therefore must be construed liberally in favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). "Because the FDCPA, like the Truth in Lending Act (TILA) 15 U.S.C §1601 et seq., is a remedial statute, it should be construed liberally in favor of the consumer." Johnson v. Riddle, 305 F. 3d 1107 (10th Cir. 2002).
- 29. The FDCPA is to be interpreted in accordance with the "least sophisticated" consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano v. Harrison, 950 F. 2d 107 (3<sup>rd</sup> Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc., 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not "made for the protection of experts, but for

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the public - that vast multitude which includes the ignorant, the unthinking, and the credulous, and the fact that a false statement may be obviously false to those who are trained and experienced does not change its character, nor take away its power to deceive others less experienced." Id. The least sophisticated consumer standard serves a dual purpose in that it ensures protection of all consumers, even naive and trusting, against deceptive collection practices, and protects collectors against liability for bizarre or idiosyncratic interpretations of collection notices. Clomon, 988 F. 2d at 1318.

# COUNT I DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT

- In its actions to collect a disputed debt, Defendant violated the FDCPA in one or 30. more of the following ways:
  - a. Defendant violated of the FDCPA generally;
  - b. Defendant violated §1692b(2) of the FDCPA by informing Plaintiff that another person, Dillard Looney, owed a debt;
  - c. Defendant violated §1692b(3) of the FDCPA by calling Plaintiff more than once in connection for the collection of a debt of another person;
  - d. Defendant violated §1692c(b) of the FDCPA by communicating with Plaintiff about a debt allegedly owed by another person;
  - e. Defendant violated §1692d of the FDCPA by harassing Plaintiff in connection with the collection of an alleged debt;
  - f. Defendant violated §1692d(5) of the FDCPA when it caused the Plaintiff's telephone to ring repeatedly or continuously with the intent to harass, annoy or abuse Plaintiff;

- g. Defendant violated §1692f of the FDCPA by using unfair and unconscionable means with Plaintiff to collect or attempt to collect a debt; and
- h. Defendant acted in an otherwise deceptive, unfair and unconscionable manner and failed to comply with the FDCPA.

WHEREFORE, Plaintiff, EVON FUQUA, respectfully prays for a judgment as follows:

- a. All actual compensatory damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);
- b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- c. All reasonable attorneys' fees, witness fees, court costs and other litigation costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3); and
- d. Any other relief deemed appropriate by this Honorable Court.

## **DEMAND FOR JURY TRIAL**

PLEASE TAKE NOTICE that Plaintiff, EVON FUQUA, demands a jury trial in this

case.

9 DATED: 5-27-11

RESPECTFULLY SUBMITTED,

KIMMEL & SILVERMAN, P.C.

ву: <u>СКЗ</u>

Craig Thor Kimmel Attorney ID # 57100

Kimmel & Silverman, P.C.

30 E. Butler Pike

Ambler, PA 19002

Phone: (215) 540-8888 Fax: (877) 788-2864

Email: kimmel@creditlaw.com